

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK
CASE NO.: 07-cv-6034

JULIA PICHARDO

Plaintiff,

-against-

NEW YORK UNIVERSITY and
JANE DOE – Student,

Defendants.

**ATTORNEY'S AFFIDAVIT IN SUPPORT OF
MOTION TO DISMISS PURSUANT TO F.R.C.P. § 41(b)**

TO: THE HONORABLE MICHAEL H. DOLINGER
UNITED STATES MAGISTRATE JUDGE

DANIEL J. FOX, an attorney at law admitted to practice before the Courts of the State of New York and the Southern District of New York, upon penalty of perjury, duly affirms as follows:

1. I am an associate of the firm Goldberg & Associates, attorneys for Defendant NEW YORK UNIVERSITY (“NYU”), and as such, I am familiar with the facts and circumstances of this matter as reflected in the file maintained by this office.

2. I respectfully submit this Affidavit in further support of NYU’s motion pursuant to F.R.C.P. § 41(b) for an Order dismissing Plaintiff’s Complaint in its entirety on the grounds that Plaintiff has failed to comply with this Court’s Orders, serve any discovery or prosecute her lawsuit in any manner.

3. True copies of Plaintiff’s Complaint and NYU’s Answer and Affirmative Defenses are annexed hereto collectively as Exhibit “A”.

4. A copy of this Court's Order dated September 20, 2007 is annexed hereto as Exhibit "B". Plaintiff is in default of said order by failing to provider her initial disclosures or participating in any fact discovery.

5. Copies of NYU's Demand for Production of Documents and Demand for Interrogatories are annexed hereto collectively as Exhibit "C". To date, Plaintiff has never served a response to the aforesaid demands.

6. A true copy of the November 29, 2007 letter from the undersigned counsel of NYU to Plaintiff's former attorneys, the law firm of Joseph T. Mullen, Jr. & Associates, is annexed hereto as Exhibit "D". This letter constitutes NYU's first written attempt to compel Plaintiff's compliance with discovery.

7. A copy of this Court's Order dated January 16, 2008 is annexed hereto as Exhibit "E". Despite having been ordered by this Court to appear in person at the January 22, 2008 conference, Plaintiff failed to appear. However, NYU acknowledges that the Court *sua sponte* excused her appearance when her erstwhile attorney advised that she would not be in attendance.

8. A true copy of the February 21, 2008 letter from the undersigned counsel of NYU to Plaintiff is annexed hereto as Exhibit "F". This letter constitutes NYU's second written attempt to compel Plaintiff's compliance with discovery.

9. A true copy of the March 24, 2008 letter from the undersigned counsel of NYU to the Honorable Michael H. Dolinger, which was also provided to Plaintiff, is annexed hereto as Exhibit "G". By providing this letter to Plaintiff's counsel, it is submitted that the letter constitutes NYU's third written attempt to compel Plaintiff's compliance with discovery.

10. A true copy of the April 10, 2008 letter from the undersigned counsel of NYU to Plaintiff forwarded by Certified Mail Return Receipt Requested together with the receipt evidencing Plaintiff's receipt of the letter is annexed hereto as Exhibit "H". This letter constitutes NYU's fourth written attempt to compel Plaintiff's compliance with discovery.

11. A copy of this Court's Memorandum and Order dated June 9, 2008 is annexed hereto as Exhibit "I". Pursuant to the Order, Plaintiff was directed to respond to NYU's "long-pending" document requests on or before June 23, 2008. Furthermore, pursuant to the Order, NYU was directed to move by motion, "for appropriate relief, which may include dismissal of the complaint."

12. Plaintiff has never contacted the undersigned counsel for NYU despite repeated requests for her to do so. Moreover, Plaintiff has failed to prosecute her lawsuit against NYU in any manner.

13. Furthermore, Plaintiff has failed to comply with this Court's Orders both while represented by counsel and as a *pro se* litigant. Even where Plaintiff was warned by the Court that her repeated failure to respond to discovery may warrant dismissal of her lawsuit, Plaintiff has nonetheless failed to respond.

14. NYU respectfully submits this Affidavit together with its Memorandum of Law in support of its belief that Plaintiff's Complaint should be dismissed with prejudice.

WHEREFORE, based on the foregoing and pursuant to § 41(b) of the Federal Rules of Civil Procedure, NYU respectfully requests that this Court enter an Order

dismissing Plaintiff's Complaint in its entirety, with prejudice, and for such other, further and different relief as is just and proper under the circumstances.

Dated: New York, New York
June 27, 2008

Respectfully submitted,

GOLDBERG & ASSOCIATES
Attorneys for NYU

By: /s/
DANIEL J. FOX (DF-4765)
39 Broadway, 17th Floor
New York, New York 10006
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Sworn to before me on
this 27th day of June, 2008

/s/
WILLIAM H. GRAE
Notary Public